RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—PROPERTY SUBJECT TO—HIGHWAYS.—The defendant for more than fifteen years maintained fences, cattle sheds and other obstructions in and across a public highway; an action was brought to enjoin these obstructions to travel. *Held,* lapse of time will not bar the remedies of the state against encroachments upon a highway; a private individual cannot obtain title to a public highway by adverse possession. *Eble* v. *State, ex rel. Leavenworth County Attorney* (1908), — Kan. —, 93 Pac. Rep. 803.

The authorities on the question presented in the principal case are not in harmony. The earlier decisions in many states allowed title in the property of municipalities and other territorial subdivisions to be acquired by adverse possession, arguing that the local authorities must prevent all encroachments and that the maxim, "lapse of time does not bar the right of the crown," applies to the sovereign alone. A few courts still maintain this theory; *Cady* v. *Fitzimmons,* 50 Conn. 209; *Terrill* v. *Bloomfield,* (Ky.) 21 S. W. 1041; *Darrow* v. *Hourer,* 122 Mich. 229, 81 N. W. 262; *City of Hastings* v. *Gillitt,* 85 Minn. 331, 88 N. W. 987; *Knight* v. *Heaton,* 22 Vt. 480. The great weight of authority, however, as well as the better reason, is in accord with the holding in the principal case; the maxim quoted above applies as well to governmental agencies in the exercise of a delegated sovereign power as to the sovereign itself. Any interference with a public easement constitutes a public nuisance, and it may be abated by the authorities at any time; *Ralston* v. *Weston,* 46 Va. 544, 33 S. E. 326, 76 Am. St. Rep. 834; *Oakland* v. *O. W. F. Co.,* 118 Cal. 160, 50 Pac. 277; *De Kalb* v. *Luney,* 193 Ill, 185, 61 N. E. 1036; *Railroad Co.* v. *County Comm'rs,* 31 O. S. 338; *Driggs* v. *Phillips,* 103 N. Y. 77, 8 N. E. 514; *Price* v. *Plainfield,* 40 N. J. L. 608; Note to *Railway Co.* v. *Ely,* 87 Am. St. Rep. 775. But adverse possession may bar the title of an owner of the fee in land over which the public has an easement; *Read* v. *Leeds,* 19 Conn. 182; *Woodruff* v. *Paddock,* 130 N. Y. 618, 29 N. E. 1021. There is a recent tendency to distinguish between property held by a municipality in its private capacity and that held in its strictly public capacity; as to the former class, the municipality is subject to the limitation laws; *Ames* v. *San Diego,* 101 Cal. 390, 35 Pac. 1005; *Bedford* v. *Willard,* 133 Ind. 562, 33 N. E. 368; *Hammond* v. *Shepard,* 186 Ill. 235, 57 N. E. 867, 78 Am. St. Rep. 274.

AGENCY—BROKERS—COMMISSIONS—WHEN EARNED. — Plaintiff procured for defendant a purchaser for a traction engine and corn shredder. The buyer wished to apply a village lot upon the purchase price. Defendant refused to take the lot, the sale was not completed, and the property was not delivered. Plaintiff sues for commissions. *Held,* that he could not recover. *Sterling* v. *Aultman Engine & Thresher Co.* (1908), — Mich. —, 114 W. W. Rep. 1011.

In reversing the decision of the lower court and holding that it should have directed a verdict for the defendant the court has followed the weight

of authority. In order that a broker may recover his commissions, he must show performance on his part of his contract. This contract is either express or implied. When express, the broker must show that he has complied with its provisions. Mechem, in speaking of real estate brokers, says: "It is indispensable that the purchaser produced should be one ready, willing and able to purchase upon the terms specified, if any were fixed, for if he be willing to buy only on different terms, or at a different price or upon different conditions, the broker will not be entitled to his commission, unless the variance be waived by the principal." MECHEM, AGENCY, § 966, p. 796. Cases illustrating this are: *Reiger* v. *Bigger,* 29 Mo. App. 421; *Harwood* v. *Triplett,* 34 Mo. App. 273; *Armstrong* v. *O'Brien,* 83 Tex. 635, 19 S. W. 268; *Runyon* v. *Wilkinson, Gaddis & Co.,* 57 N. J. Law 420, 31 Atl. 390. If there are no express provisions in the broker's contract, he is considered to have performed only when he presents a purchaser who is ready, willing, and able to buy according to terms satisfactory to the vendor. As long as the purchaser refuses to accede to the requirements which the vendor has a right to make, there is no performance by the broker. A vendor cannot change the conditions of sale once a contract has been entered into, and thereby relieve himself from liability to pay. But he may make such requirements as he sees fit preliminary to the making of the contract, and until the purchaser agrees to such conditions there is no performance on the part of the broker. The broker's service must result in a meeting of the minds of both vendor and vendee before he can demand his commissions. *Bennett* v. *Egan* 3 Misc. Rep. 421, 23 N. Y. Supp. 154; *Morrill et al.* v. *E. Viola Davis et al.,* 27 Neb. 775, 43 N. W. 1146. In this case the defendant had a perfect right to refuse to take the village lot in part payment of the purchase price, and as a result of this refusal there was no sale effected.

BANKRUPTCY—ACTS OF BANKRUPTCY—PAYMENT WITH INTENT TO PREFER A CREDITOR.—One B., who was indebted to various persons in the sum of $13,000, paid a current store bill of $2.75, one of the items being a dressed doll at $2.15. The plaintiff and other creditors petitioned to have B. adjudged an involuntary bankrupt. The amount of his assets was not stated, but the attorney for the alleged bankrupt admitted the insolvency. The defendant denied that the acts were acts of bankruptcy. It was also in evidence that B. had made other payments of considerable amounts, but as to these, the master found that B. made them only as agent. *Held,* that this payment by B., though made while insolvent, did not raise such a presumption of intent to give a preference as to overcome his testimony to the contrary. *Macon Grocery Co. et al.* v. *Beach* (1907), — D. C., S. D. Ga., N. D. —, 156 Fed. Rep. 1009.

The principle which governed in the case was "de minimis non curat lex," taken in connection with Beach's statement that he did not intend a preference; and this despite the rule of law that every one is presumed to intend the necessary consequences of one's act. In fact the master found that Beach intended to prefer such creditor. In *Traders' Bank* v. *Campbell,* 14